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10/536,605	11/30/2006	Harry Louis Platt	080412-000000US	2258

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EXAMINER
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MALLARI, PATRICIA C

ART UNIT	PAPER NUMBER
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3735

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/536,605

Applicant(s)

PLATT ET AL.

Examiner

Patricia C. Mallari

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference sign (49), described on p. 4 of the instant specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 1-3, 5, 6, and 8-10 are objected to because of the following informalities:

On line 4 of claim 1, "electrodes" should be replaced with "electrode means".

There is no antecedent basis in the claim for "electrodes", but there is antecedent basis for "electrode means".

On line 2 "at least some of the electrodes" should be replaced with "the electrode means". See explanation above.

On line 2 of claim 3, "the remainder of the electrodes" should be replaced with "additional electrode". There is no antecedent basis in claims 1, 2, or 3, for "remainder of electrodes" or "electrodes", although an "electrode means" is claimed in claim 1.

On line 2 of claim 5, "an LCD display means" should be replaced with "the display means, wherein the display means comprises an LCD". Claim 1 already recites a "display means".

On line 1 of claim 6, "output" should be deleted.

On line 1 of claim 8, "wherein a CPU unit" should be replaced with "wherein the control and calculating means comprises a CPU unit that".

On line 3 of claim 8, "determination.," should be replaced with "determination,".

On lines 3-4 of claim 8, "LCD display, real time clock, memory, and serial interface" should be replaced with "the LCD, a real time clock, a memory, and a serial interface".

On line 2 of claim 9, "a pressure" should be replaced with "the signal transducer means, wherein the signal transducer means comprises a pressure".

On line 1 of claim 10, "blood pressure" should be replaced with "physiological". There is no antecedent basis in the claim for "blood pressure monitor", but there is antecedent basis for "physiological monitor".

On line 2 of claim 10, "such that" and "27" should be deleted.

Appropriate correction is required.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication No. 2001/0012916 to Deuter in view of US Patent No. 4,889,132 to Hutcheson et al.

Deuter teaches a physiological monitor having physiological detection means, signal transducer means, and control and calculating means (see entire document, especially figs. 1 & 2 of Deuter). Note that none of these "means" claimed in claim 1 fulfills the three-prong analysis set forth in MPEP 2181, such that 35 U.S.C. 112, 6<sup>th</sup> paragraph is not invoked. The detection means of Deuter includes an inflatable cuff means 10 with pressure detection means to test for blood pressure (see entire document, especially paragraph 22 of Deuter) and ECG electrode means to test for

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ECG, the electrode being adapted to be secured to at least the cuff means (see entire document, especially fig. 2, paragraph 23 of Deuter). Deuter further discloses an indicator unit 14 for indicating the measured values (see entire document, especially figs. 1 & 2; paragraphs 14 and 20 of Deuter), but is silent as to the details of the indicator unit.

Hutcheson discloses a physiological monitor having EKG electrodes and a blood pressure cuff, wherein the signals acquired from these sensors are processed and the results indicated to the user via LCD-type display 140 (see entire document, especially col. 15, lines 7-13 of Hutcheson). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use an LCD as the indicator of Deuter, since Deuter teaches using an indicator to indicate the measured values, and Hutcheson shows a display as an appropriate such indicator.

Regarding claim 2, the cuff means is adapted to be secured on the wrist of a user (see entire document, especially figs. 1 & 2; paragraph 20 of Deuter) and the electrode means comes into contact with the skin of the user when so secured (see entire document, especially claim 12 of Deuter).

Regarding claim 3, an additional electrode is adapted to be either held by the user or attached to the user's body (see entire document, especially figs. 1 & 2; paragraphs 20, 23, and 30 of Deuter).

Regarding claim 4, the device monitors blood pressure and ECG measurement simultaneously (see entire document, especially paragraph 25 of Deuter), wherein the

device monitors ECG measurements in order to determine the blood pressure, such that both are being monitored simultaneously.

Regarding claim 5, the measured values are stored in the device (see entire document, especially paragraph 22 of Deuter) and displayed on an LCD display means (see entirety of both documents, especially col. 15, lines 713 of Hutcheson).

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deuter in view of Hutcheson, as applied to claims 1-5 above, and further in view of US Patent No. 4,566,463 to Taniguchi et al. Deuter, as modified, teaches an alarm device 33 in order to make the patient aware of critical conditions in the nighttime (see entire document, especially paragraphs 14 of Deuter), but is silent as to the details of the alarm device and as to what critical conditions might be. However, Taniguchi teaches using a speaker in a blood pressure measuring device to indicate an operating error (see entire document, especially col. 5, lines 16-36 of Taniguchi), wherein an operating error is a measurement error. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use a speaker as the alarm device of Deuter and measurement error as at least one of the critical conditions of Deuter, since Taniguchi discloses a speaker as an appropriate such alarm and measurement error as an appropriate such condition. Alternatively, or in addition, it would have been obvious to use the alarm of Taniguchi in the device of Deuter, as modified, in order to alert the user of a measurement error.

Regarding claim 7, a communication connector 46 is used to connect to a computer means (PC) for reading blood pressure data stored in the device (see entire document, especially paragraph 28 of Deuter). As to the language "computer means" on line 2 of claim 7, the language fails to fulfill the 3 prong analysis set forth in MPEP 2181 and therefore does not invoke 35 U.S.C. 112, 6<sup>th</sup> paragraph.

Claim 8 is rejected under 35 U.S. C. 103(a) as being unpatentable over Deuter in view of Hutcheson and Taniguchi, as applied to claims 6 and 7, above, and further in view of US Patent No. 4,617,937 to Peel et al. Deuter, as modified, teaches the control and calculating means comprising a CPU unit controlling the peripherals of the device and performing the necessary calculations for blood pressure determination. The peripherals include the speaker, LCD, memory and serial interface (see entirety of documents, especially paragraphs 14, 22, 24, and 28 of Deuter; col. 15, lines 7-13 of Hutcheson; col. 5, lines 16-36 of Taniguchi). Deuter fails to recite a real time clock. However, Peel teaches a blood pressure measuring system comprising a control unit 44 controlling a real-time clock (see entire document, especially col. 4, lines 24-32 of Peel). Therefore, it would have been obvious to one ordinary skill in the art at the time of invention to combine the system of Peel with that of Deuter, as modified, in order to enable the actual time and date of the measurements to be stored along with the measurements themselves, since the use of the known technique of time-stamping measurements would have been obvious to one of ordinary skill in the art.



Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deuter in view of Hutcheson, Taniguchi, and Peel, as applied to claim 8 above, and further in view of US Patent No. 4,058,117 to Kaspari et al. Deuter, as modified, includes a pneumatic circuit formed by the cuff means and an air pump 26 (see entire document, especially paragraph 22 of Deuter), but lacks details as to the rest of the pneumatic circuit.

However, Kaspari teaches a blood pressure measurement system wherein the pneumatic circuit comprises the cuff 21, pressure transducer 83, exhaust valve 82, and air pump 80 (see entire document, especially fig. 3A: col. 8, lines 4-31 of Kaspari).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use the exhaust valve and pressure transducer of Kaspari in the pneumatic circuit of Deuter, as modified, since Deuter, as modified, discloses a pneumatic circuit for taking blood pressure measurements using an inflatable cuff, and Kaspari discloses the exhaust valve and pressure transducer as appropriate components of such a circuit.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deuter in view of Hutcheson, Taniguchi, Peel, and Kaspari, as applied to claim 9, and further in view of US Patent No. 4,703,760 to Miyawaki et al.

Deuter, as modified, lacks the monitor being operated when the user depresses a start button. However, Miyawaki teaches a blood pressure measuring monitor, wherein the monitor is operated when the user depresses the start key (see entire document, especially col. 8, lines 18-24 of Miyawaki). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to apply the technique

of utilizing a start key to operate the monitor to improve the system of Deuter, as modified, for the predictable result of controlling when the monitor is being operated.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,865,761 to Inukai et al. and US Patent No. 6,516,289 to David both teach a physiological monitor device featuring an ECG electrode means adapted to be secured to at least an inflatable cuff means with pressure detection means for testing for blood pressure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (571) 272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Patricia Mallari  
Patent Examiner  
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